

Hearing Date and Time: November 19, 2009 at 2 p.m. (EST)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

LEHMAN BROTHERS HOLDINGS, INC., *et al.*

Debtors.

Chapter 11

Case No. 08-13555 (JMP)

LEHMAN BROTHERS SPECIAL FINANCING INC. and LEHMAN
BROTHERS HOLDINGS INC.

Plaintiffs,

- against -

AMERICAN FAMILY LIFE ASSURANCE COMPANY OF
COLUMBUS and BNY CORPORATE TRUSTEE SERVICES
LIMITED,

Defendants.

Adv. Proc. No. 09-01261 (JMP)

Related Docket Nos. 54, 56

AMERICAN FAMILY LIFE ASSURANCE COMPANY OF
COLUMBUS and BNY CORPORATE TRUSTEE SERVICES
LIMITED,

Counterclaim Plaintiffs,

- against -

LEHMAN BROTHERS SPECIAL FINANCING INC. and LEHMAN
BROTHERS HOLDINGS INC.

Counterclaim Defendants.

**JOINDER OF BNY CORPORATE TRUSTEE SERVICES LIMITED
TO REPLY OF AMERICAN FAMILY LIFE ASSURANCE COMPANY
OF COLUMBUS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

REED SMITH LLP

599 Lexington Avenue
New York, New York 10022

Tel.: 212.521.5400

Fax: 212.521.5450

Eric A. Schaffer

Michael J. Venditto

David M. Schlecker

Dated: November 9, 2009

*Attorneys for BNY Corporate Trustee
Services Limited*

INTRODUCTION

Defendant BNY Corporate Trustee Services Limited (the “Trustee”), by its undersigned counsel, submits this Joinder to Reply of American Family Life Assurance Company of Columbus (“Aflac”) in Support of Motion for Summary Judgment, and respectfully states as follows:

BACKGROUND

1. On June 3, 2009, Plaintiffs Lehman Brothers Special Financing Inc. (“LBSF”) and Lehman Brothers Holdings Inc. (“LBHI” and, together with LBSF, the “Plaintiffs”), commenced the above-captioned adversary proceeding seeking a declaratory judgment against Aflac and the Trustee.

2. The Trustee filed its Answer, Affirmative Defenses & Counterclaim on July 6, 2009 (D.I. 12), and Aflac filed its First Amended Answer and Counterclaims (Corrected), on July 7, 2009 (D.I. 16).

3. On August 4, 2009, Aflac filed its Motion for Summary Judgment (D.I. 30), along with supporting papers, including a Statement of Undisputed Facts (D.I. 31), the Declaration of Robert A. Weber (D.I. 32), and a Memorandum of Law (D.I. 33) (collectively, “Aflac’s Motion for Summary Judgment”).

4. On August 20, 2009, this Court set a briefing schedule for the submission of cross-motions for summary judgment by September 25, 2009, with oppositions or responses due October 23, 2009. See Stipulation and Order Regarding Briefing Schedule and Hearing for Cross-Motions for Summary Judgment (D.I. 38).

5. On September 25, 2009, the Trustee filed a submission joining in Aflac’s Motion for Summary Judgment (D.I. 39).

6. Also on September 25, 2009, Plaintiffs filed their Motion for Summary Judgment, along with supporting papers, including the Declaration of Ralph I. Miller, and Statement of Material Undisputed Facts (D.I. 40) (collectively, “Plaintiffs’ Motion for Summary Judgment”).

7. Also on September 25, 2009, the Official Committee of Unsecured Creditors (“Committee”) filed a submission joining in Plaintiffs Motion for Summary Judgment (D.I. 41).

8. On October 23, 2009, Aflac filed an Opposition to Motion for Summary Judgment of Lehman Brothers Special Financing Inc. and Lehman Brothers Holdings Inc. (D.I. 44), along with supporting papers, including the Supplemental Declaration of Robert A. Weber (D.I. 46) and Response to Statement of Material Undisputed Facts (D.I. 45), (collectively, “Aflac’s Opposition”).

9. On October 23, 2009, the Trustee filed a submission joining in Aflac’s Opposition (D.I. 47).

10. Also on October 23, 2009, Plaintiffs filed a Memorandum of Law in Opposition to Aflac’s Motion for Summary Judgment (D.I. 48) along with supporting papers, including the Declaration of Ralph L. Miller (D.I. 49), and Response to Aflac’s Statement of Material Undisputed Facts (D.I. 50), (collectively, “Plaintiff’s Opposition”).

11. Also on October 23, 2009, the Committee filed a submission joining in Plaintiff’s Opposition (D.I. 51).

12. On November 9, 2009, Aflac filed a Reply Brief in support of Aflac’s Motion for Summary Judgment (D.I. 54), along with supporting papers, including the Second Supplemental Declaration of Robert A. Weber (D.I. 56), (collectively, “Aflac’s Reply”).

TRUSTEE'S JOINDER IN AFLAC'S REPLY

13. The Trustee concurs with the factual recitation and legal arguments set forth in Aflac's Reply, and hereby joins and adopts Aflac's Reply as its own, the entirety of which is incorporated by reference herein.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the Trustee hereby joins in Aflac's Reply, and respectfully requests that this Court enter an order granting summary judgment in favor of Aflac and the Trustee and dismissing the Plaintiffs' Complaint, with such other and further relief as this Court deems just and proper.

Dated: November 9, 2009
New York, New York

REED SMITH LLP

/s/ Eric A. Schaffer

Eric A. Schaffer

Michael J. Venditto

David M. Schlecker

599 Lexington Avenue

New York, New York 10022

Tel.: 212.521.5400

Fax: 212.521.5450

*Attorneys for BNY Corporate Trustee
Services, Limited*